



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0059; FRL-10645-01-R9]

Air Plan Limited Approval and Limited Disapproval; California; Eastern Kern Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of revisions to the Eastern Kern Air Pollution Control District (EKAPCD or “District”) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) from Portland cement kilns. We are proposing a limited approval of a local rule to regulate these emissions sources under the Clean Air Act (CAA) because the rule would strengthen the current SIP-approved version of the EKAPCD’s Portland cement kiln rule. We are proposing a limited disapproval of this revision due to the presence of exemptions for periods of startup, shutdown, and malfunction (breakdown), which are inconsistent with CAA requirements. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0059 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions

(audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Elijah Gordon, EPA Region IX, 75 Hawthorne St. (AIR-3-3), San Francisco, CA 94105. By phone: (415) 972-3158 or by email at gordon.elijah@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State’s Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the

local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED DOCUMENTS

Local Agency	Rule Number	Title	Adopted	Submitted
EKAPCD	Rule 425.3	Portland Cement Kilns (Oxides of Nitrogen)	03/08/2018	08/22/2018

Pursuant to CAA section 110(k)(1)(B) and 40 CFR Part 51 Appendix V, the EPA determined that the submittal for EKAPCD Rule 425.3 met the completeness criteria on February 11, 2019.

B. Are there other versions of this rule?

We approved an earlier version of Rule 425.3 into the SIP on July 20, 1999 (64 FR 38832). The EKAPCD adopted revisions to the SIP-approved version on March 8, 2018, and CARB submitted them to us on August 22, 2018.

C. What is the purpose of the submitted rule revision?

Emissions of NO_x contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit plans that provide for implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS). In addition, sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as Moderate or above implement Reasonable Available Control Technology (RACT) for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of volatile organic compounds (VOCs) or NO_x. The EKAPCD is subject to these requirements as it regulates the Eastern Kern ozone nonattainment area that was designated and classified as Moderate at the time of their RACT SIP submittal for the 2008 8-hour ozone NAAQS ("2017 RACT SIP").¹ Therefore, the EKAPCD must, at a minimum, adopt RACT-level controls for all sources covered

¹ The EPA has since reclassified the Eastern Kern ozone nonattainment area to Serious on July 5, 2018 (83 FR 31334) and Severe-15 on June 7, 2021 (86 FR 30204).

by a CTG document and for all major sources of VOCs or NO_x within the District. Any stationary source that emits or has the potential to emit at least 100 tons per year (tpy) of VOCs or NO_x in a Moderate ozone nonattainment area is considered a major stationary source. We have acted on, and approved, all required elements that must be covered by a RACT SIP except for non-CTG major NO_x sources.²

In their 2017 RACT SIP, the EKAPCD concluded that the earlier SIP-approved Rule 425.3, which establishes NO_x emission limits for Portland cement kilns within the District, was one of three rules that did not currently meet RACT for non-CTG major sources of NO_x and acknowledged the need to revise the rule, primarily the emission limits for NO_x (11.6 pounds per ton of clinker produced when averaged over any 24 consecutive hour period and 6.4 pounds per ton of clinker produced when averaged over any 30 consecutive day period). In response, the District has amended Rule 425.3 in an effort to correct RACT deficiencies and fulfill their 2017 RACT SIP demonstration requirements for non-CTG major sources of NO_x for the 2008 8-hour ozone NAAQS. The submitted rule revisions consist of more stringent NO_x emission limits, new emission monitoring requirements, and several recordkeeping requirements. The EPA's technical support document (TSD) has more information about these rule revisions.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), and must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)).

Generally, ozone nonattainment areas classified as Moderate or above (see CAA sections 182(b)(2) and 182(f)) are required to submit SIP revisions that implement RACT-level controls for certain source categories, including for each non-CTG major source of NO_x. At the time of its 2017 RACT SIP submittal, the EKAPCD regulated an ozone nonattainment area classified as

² 86 FR 3816, 86 FR 60771.

“Moderate” for the 2008 8-hour ozone NAAQS, and is therefore required to demonstrate RACT-level controls for that ozone standard. EKAPCD revised Rule 425.3 to implement RACT-level controls to fulfill the requirements associated with the non-CTG major source NO_x element for the 2008 8-hour ozone NAAQS.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation, and rule stringency requirements include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
4. “State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,” (the NO_x Supplement), 57 FR 55620, November 25, 1992.
5. “NO_x Emissions from Cement Manufacturing,” EPA-453/R-94-004, March 1994.
6. “NO_x Control Technologies for the Cement Industry: Final Report,” EPA 457/R-00-002, September 2000.
7. The Texas Commission on Environmental Quality in Section 117.3110 – Cement Kilns, Emissions Specifications, May 23, 2007.
8. “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction” (80 FR 33839), June 12, 2015.
9. “Guidance Memorandum: Withdrawal of the October 9, 2020, Memorandum Addressing

Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,” September 30, 2021.

B. Does the rule meet the evaluation criteria?

Rule 425.3 establishes more stringent emission limits for NO_x and strengthens monitoring, recordkeeping, and reporting requirements. As a result, the EPA is proposing that the District’s submitted rule revision strengthens the SIP. Under Rule 425.3, NO_x emission limits outside of periods of startup, shutdown, and breakdown (malfunction) are reduced from 6.4 to 2.8 (or 3.4 for low-NO_x burner or low-NO_x precalciner) pounds per ton of clinker produced when averaged over any 30 consecutive day period.

To evaluate the stringency of this NO_x emission limit, the EPA examined cement kiln rules in other states and districts. As outlined in further detail in the TSD available in the docket, based upon our comparison to other approved rules regulating Portland cement kilns (e.g., 30 TAC Chapter 117 (74 FR 1927) in Texas, which includes a 2.8 lb/ton limit on a 30-day rolling average for preheater-precalciner kilns), as well as the District’s cost analysis, we consider the revised 2.8 lb/ton NO_x limit to implement RACT-level stringency for periods of operation during which it applies. Additionally, provisions clearly laid out in Sections (V)(B), (V)(C), (VI)(A), (VI)(B), and (VI)(C) establish applicability criteria, monitoring, recordkeeping, and reporting that can be evaluated to determine compliance. Finally, the retention of all produced and maintained on-site records increased from 24 months to 60 months. These SIP strengthening revisions to Rule 425.3 are discussed in greater detail within the TSD. However, the EPA is also proposing that certain provisions of revised Rule 425.3 do not meet our evaluation criteria and prevent full approval of the rule into the SIP. These rule deficiencies are summarized below and discussed further in the TSD.

C. What are the proposed rule deficiencies?

The EPA is proposing to determine that the following provisions do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP

revision, for reasons described here and explained in further detail in the TSD.

1. CAA §110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques as necessary to meet CAA requirements. The term “emission limitation” is defined in CAA §302(k) as a requirement that “limits the quantity, rate, or concentration of emissions of air pollution on a continuous basis [...].” An emission limitation or requirement that exempts a period of source operation, such as startup, cannot be considered continuous and is not consistent with CAA requirements.

Section (IV)(A) of the rule contains an exemption to an otherwise applicable emission limitation for periods of startup and shutdown, stating that “the requirements of Section V of this Rule shall not apply [...] to startup and shutdown as defined” in Sections (III)(J) and (III)(K). Although the rule revision contains individual startup (48 hours) and shutdown (36 hours) time limits in Sections (III)(J) and (III)(K), along with SSM recordkeeping requirements in Section (VI)(B)(4), these provisions are not sufficient to establish an emission limit that could be considered adequate for CAA purposes. Elimination of the existing startup and shutdown exemption to address the concerns raised in the EPA’s evaluation is necessary for full approval of the rule into the SIP.

2. Section (IV)(B) contains an exemption for breakdown conditions from the emission limit, emission monitoring, and production monitoring requirements found in Section (V). Similar to the first deficiency noted above, an emission limitation or requirement that exempts a period of source operation cannot be considered adequate for CAA purposes. Removal of this exemption for breakdown conditions is necessary for full approval of the rule into the SIP.

D. Proposed action and public comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of the submitted rule due to the deficiencies identified above.

We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the *Federal Register*]**. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3).

If we finalize this limited disapproval, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months of the effective date of our final action unless we approve a subsequent SIP revision that corrects the deficiencies identified in our evaluation (i.e., as stated previously, a SIP revision that eliminates the existing startup, shutdown, and breakdown exemptions to address the deficiencies identified in the EPA's limited disapproval). In addition, finalizing this limited disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final limited disapproval, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline.

Note that the submitted rule has been adopted by the EKAPCD, and the EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at:

<https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference EKAPCD Rule 425.3, "Portland Cement Kilns (Oxides of Nitrogen)," amended on March 8, 2018, which regulates NO_x emissions from the operation of cement kilns. The EPA has made, and will continue to make, these materials available through

www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The State did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: **February 9, 2023.**

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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